

APPROVED CONTRACT LANGUAGE CHANGES FOR RFQ 0006

GENERAL PROVISIONS		
Page	Section	Proposed Change
2	17a	Insert following phrase to section “The State may audit the Contractor’s quality assurance policies and procedures with prior written notice. The notice shall explain in detail the materials to be audited and allow ample time to retrieve the documents requested.”
2	17c	Insert following phrase to section “ The State may, with prior written notification visit Supplier’s facilities and inspect predetermined documentation. During such visits, State personnel shall adhere to the facility safety policies and procedures and use responsible care to not disrupt, slow or impede Supplier’s personnel from performing their respective duties.”
5	36f	Insert bolded phrase “Contractor certifies to the best of its knowledge that it has appropriate systems...”
3	23a	Insert bolded phrase “...for its convenience upon fourteen (14) days advance written notice be given to Contractor in whole or, from time to time...”
3	24b	Insert bolded phrase “... within time frame stated (time to cure shall not be less than fourteen (14) days) in the cure notice issued...”
6	46a	Insert bolded paragraph “...This warranty and representation is subject to the warranty terms and conditions of this contract. The warranty does not cover any Software that has been subject to damage or abuse. The warranty does not cover any Software that has been altered or changed in any way by anyone other than Contractor. Contractor is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems that are made after the delivery to State of the Software, nor for problems in the interaction of the Software with non-Contractor software. If State reports to Contractor within 60 days of the receipt of Software deliverable that such Software does not correctly process date and date-related data pursuant to its specifications, then Contractor within a reasonable time frame shall exercise commercially reasonable efforts to correct any material non-compliance. Contractor will supply any resulting correction to Customer without charge. This is State’s sole and exclusive remedy for any breach of this Year 2000 warranty. Nothing in this warranty shall... Delete last sentence in section.
3	25c	Insert new Section 25c “Fire, theft, war, riot, embargoes, or acts of civil or military authorities.”
3	23a	Replace “Notice of Termination” with “thirty (30) day Notice of Termination.” Insert following phrase to end of section “Within 90 days from the effective date of termination, unless this time frame is extended by the State, Contractor shall submit a final termination settlement proposal to the State. Contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination.”

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4	34	Insert bolded phrase "...such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The State agrees to protect all Confidential Information provided by the Contractor and not to publish or disclose such information to any third party without the Contractor's written permission by using those methods and procedures normally used to protect one's own Confidential Information. By Confidential Information, Contractor means materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential. The Contractor shall not be required..." Replace "The Contractor shall not be required" with "Neither party shall be required." Replace "is already rightfully in the Contractor's possession" with "is already rightfully in the receiving party's possession." Replace "is independently developed by the Contractor outside the scope of this contract" with "is independently developed by the receiving party outside the scope of this contract."
1	8	Insert bolded phrase "...arising out of any breach of this warranty, subject to the provisions of the Limitation of Liability, contained elsewhere in this contract. Further, contractor avers that it will not enter..."
2	17e	Insert bolded phrases "...after receipt of such goods or performance of such services in accordance with the acceptance criteria contained in the Statement of Work. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation regarding Contractor warranty obligations in this contract with respect to any nonconformity."
3	23a	Insert bolded phrase "...Notice of Termination specifying the extent of termination and the effective date thereof which shall in no case be less than 30 days from the delivery of the Notice. The parties agree that, as to the terminated..."
3	24c	Insert bolded phrase "...will be liable to the State for any excess costs for those goods or services upon reasonable and good faith review. However, the Contractor shall continue..."
3	25	Replace "excess costs" with "costs."
4	27a	Change entire section to read "The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose during the term of this contract either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the negligence of the Contractor, provided that the Contractor is given written notice of such claims within 30 days of the State's gaining knowledge of such claims."
4	32	Insert following phrase to end of section "in the Statement of Work."

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4	36d	Insert bolded phrase "...or to replace or modify the same so that they become non-infringing and continue to meet the specifications contained in this contract . If none of these options can reasonably be taken..."
5	37	Insert bolded phrase "...to allow interviews of any employees or others who might reasonably have information related to such records with twenty-four (24) hours advance written notice from the State . Further, Contractor agrees to include..." Insert following phrase to end of section "To the extent allowed by Government Code Section 8546.7, nothing in this paragraph shall require the Contractor to disclose information regarding Contractor" profits or the Contractor" costs of providing products or services to the State."
2	21	Insert bolded phrase "...workers' compensation insurance and any other insurance the State deems appropriate under the contract and set forth in a purchase order . Contractor shall furnish..."
3	24b	Insert bolded phrase "...within the time frame stated in the cure notice issued by the buyer which will not be less than fourteen (14) days ."
4	34	Delete "If the methods and procedures employed by the contractor for the protection...to carry out the intent of this paragraph." Insert "The Contractor agrees to: (I) use confidential information of the State for the purposes of, or as otherwise permitted by, this Agreement and shall use reasonable measures to prevent the disclosure of such confidential information to any third party, without the State's prior written consent, other than to the Contractor's subcontractors or its employees on a need-to-know basis, (ii) take measures that, in the aggregate, are not less protective than those measures it uses to protect the confidentiality of its own comparable confidential information and (iii) take reasonable steps to advise its employees (and its subcontractors) of the confidential nature of the confidential information and of the prohibitions on copying or revealing such confidential information contained herein. The Contractor agrees to require that the State's confidential information be kept in a reasonably secure location."
4	36a	Insert bolded phrase "...secret process, United States patented or unpatented invention, article..."
4	36d	Replace "goods or software" in entire section with "systems or materials provided or work performed by the Contractor."
4	36d	Delete bolded phrase "...procuring substitute goods or software. If, in the sole opinion of the State , the return..."
5	36f	Change entire section to read "Contractor certifies that it will use its reasonable and diligent efforts to put in place appropriate systems and controls to provide reasonable assurance that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws."
3	24b	Replace "...subparagraphs (a)(ii) and (a)(iii) above" with "...subparagraph (a) above." Replace "the time frame stated in" with "fourteen (14) days after receipt of."

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3	24d	Insert bolded phrase "...may require the contractor to transfer title or license, as applicable , and deliver to the..."
3	24e	Insert bolded phrase "The State shall pay contract price for completed goods and services delivered and accepted. The contractor and buyer..."
4	34	Insert following phrase to end of section "The State agrees to protect the confidential information of Contractor in the same manner it uses to protect its own confidential information of like kind, and in no event will use less than a reasonable standard of care."
5	37	Insert following phrase to end of section "Nothing in this contract shall require the Contractor to disclose information regarding the Contractor's profits or costs of providing products or services to the State."
2	17c	Insert bolded word "...Contractor shall furnish to inspectors all available information and data..."
3	24b	Replace "within the time frame stated in" with "fourteen (14) days from the date of."
5	36f	Replace "systems and controls" with "policies."
5	38c	Delete "If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions."
4	34	Replace "State" in entire section with "both parties."
2	17e	Insert bolded phrase to beginning of section " Unless otherwise specified in a Statement of Work , the State shall give notice..."
2	19	Insert bolded phrase "Unless otherwise specified, in a Statement of Work , the warranties contained in this contract..."
3	26a	Insert bolded phrase "...should fail to conform to the requirements herein, or to the sample submitted by the Contractor, or meet the acceptance criteria delineated in a S.O.W. , the State may reject the same, and it shall become the duty of the Contractor..."
3	24g	Insert bolded phrase to beginning of section " Except as otherwise stated , the rights and remedies..."
4	28	Insert following phrase to end of section "for injury to the person and/or damage to the tangible property, and arising out of and to the extent of the contractor's fault or negligence."

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Page	Section	Proposed Change
4	34	Change entire section to read “All financial, statistical, personal, technical and other data and information relating to either party’s operation which are designated confidential by that party and made available to the other party in order to carry out this contract, or which become available to the other party in carrying out this contract, shall be protected by the other party from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the party that discloses the confidential data or information. The identification of all such confidential data and information as well as the disclosing party’s procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the disclosing party to the other party in writing. If the methods and procedures employed by the other party for the protection of the other party’s data and information are deemed by the disclosing party to be adequate for the protection of the disclosing party’s confidential information, such as methods and procedures may be used, with the written consent of the disclosing party, to carry out the intent of this paragraph. Neither party shall be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in that party’s possession, is independently developed by that party outside the scope of this contract, or is rightfully obtained from third parties.”
5	37	Insert following phrase to end of section “The contractor’s obligations as set forth in this section are contingent upon the State’s compliance with Section 34 with regard to contractor” confidential and proprietary information and data, and the State agrees to require any third party who may be provided access to contractor’s confidential or proprietary information and data to agree to protect that information and data to the same extent as is set forth in this agreement.”
5	38c	Insert bolded phrase “...if an appeal was made and shall be delivered to contractor at contractor’s last provided address by certified mail, return receipt requested. If the State fails...” Delete second sentence in its entirety. Add bolded phrase “...within 90 days following the date of the contractor’s receipt of the final decision as shown on the certified mail delivery receipt or one (1) year...”
1	1c	Insert following phrase to end of section “, including the Request for Qualifications (RFQ) for E-Commerce/E-Government services issued by the State of California, DGS, and vendor’s response thereto which are incorporated by reference into, and made part of, the Contract.”
3	24b	Replace “within the time frame stated in the cure notice issued by the buyer” with “within fourteen (14) calendar days of receipt of such cure notice issued by the State.”

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Page	Section	Proposed Change
7	51	<p>Insert new Section 51 “Contractor’s Intellectual Property” (1) The term “Contractor’s Intellectual Property” shall mean all Contractor (a) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith; (d) mask works and all applications, registrations and renewals in connection therewith; (e) trade secrets and confidential business information (including ideas, research and development know-how, formulas, composition, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); (f) computer software (including data and related documentation); and (g) copies and tangible embodiments of any of the foregoing (in whatever form or medium). (2) The term “System” shall mean all Contractor provided hardware, software, communications interface, application development, and ongoing service support required to establish a telecommunications network and central database system to support real-time (and batch) electronic transmission from licensing systems, located throughout the State, to the central database. (3) <u>Acknowledgment of Proprietary Materials; Limitations on Use.</u> The State acknowledges that the System, including, any incorporated Contractor Intellectual Property, is the property of the Contractor and that the Contractor holds all intellectual property rights therein. The State further acknowledges that the State shall treat the System in confidence and shall not use, copy, disclose, nor permit any State Personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement.”</p>

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2	19a(i)	Insert new Section 19a(i) “Non-Infringement Warranty – Contractor represents and warrants to Customer that the Custom Work Product and any embedded software, when property used as contemplated herein, will not infringe or misappropriate any United States copyright, trademark, patent, or the trade secrets of any third persons. Upon being notified of such a claim, Contractor shall (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Custom Work Product; (ii) rework the Custom Work Product so as to make it non-infringing while preserving the original functionality, or (iii) replace the Custom Work Product with functionally equivalent software. If Customer determines that none of the foregoing alternatives provide an adequate remedy, Customer may terminate all or any part of this Agreement and, in addition to other relief, recover amounts paid hereunder.”
2	19a(ii)	Insert new section 19a(ii) “Optional On-Going Maintenance Option – If required by Customer, Contractor shall provide additional on-going maintenance services pursuant to the separate maintenance agreement in order to fix future problems and enhance the Custom Work Product. The fees for such maintenance services shall be negotiated between the parties.”
3	22a	Insert following phrase to end of section “, pursuant to the payment of current services rendered under the currently approved fiscal budget.”
3	24b	Replace “within the time frame stated in” with “fourteen (14) days following contractor’s receipt of.”
5	36d	Insert bolded phrase “...without penalty or termination charge. The Contractor agrees to take back such goods or software, excluding services , and refund any sums the State has paid...”
3	24b	Replace “within the time frame stated in” with “fourteen (14) days following contractor’s receipt of.”
5	37	Insert following phrase to end of section “The interviewing of Contractor’s employees during the audit process should be, at the option of the Contractor, with the prior consent of the Contractor. The Contractor will not withhold such approval to where it prohibits the State from conducting a thorough audit.”
5	37	Insert following phrase to end of section “Any records and supporting documentation, any copies thereof and any other information obtained by the State in connection with an audit hereunder is the confidential information of the Contractor and may not be disclosed to any third party.”

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IT GENERAL TERMS AND CONDITIONS		
Page	Section	Proposed Change
4	5a	Insert following phrase to beginning of section “Unless otherwise specified in the Statement of Work.”
4	6	Insert new Section 6 “ U.S. Export Policy - The State agrees to comply with all United States laws, regulations and requirements that regulate the export of United States origin products and prohibits their export if the State knows, or has reason to know, that such products are for use in connection with the design, development, production, stockpiling or use of nuclear, chemical or biological weapons or missiles.”
4	5e	Insert new Section 5e “For purposes of this Agreement, Existing Materials means software programs and related documentation, methodologies, tools and materials owned by Contractor prior to the effective date of this Agreement. Contractor is and shall remain the owner of licensee of all right, title and interest in and to the Existing Materials. It is understood that no title to or ownership of the Existing Materials or any part thereof, is hereby transferred to the State. To the extent that intellectual property rights in the Existing Materials are required to produce the Deliverables, Contractor grants the State a royalty-free, non-exclusive, non-transferable, worldwide license to use such rights in order to carry out the objectives of this Agreement.”
4	7	Insert new Section 7 “ Bilateral No-Hire Agreement -Without the prior written consent of the other party, State and Contractor each agree to refrain from conducting employment discussions with, or hiring, directly or indirectly, the other party’s employees, agents, and subcontractors (“Personnel”) who have worked on the Project, until twelve (12) months after the date the Personnel were last involved in any activity related to the Project.”
4	5a	Change entire section to read “All deliverables as defined in the Statement of Work originated or prepared by the Contractor pursuant to this Contract and fully funded by the State (including papers, reports, charts, computer programs, and other documentation, but not including Contractor’s administrative communications and records relating to this Contract) shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.”
4	5a	Insert bolded phrase “...computer programs designed specifically for the State , and other documentation...”
4	5b	Insert bolded phrase “...the course of this Contract specifically for use by the State by the Contractor...”
4	6d	Insert new Section 6d “The State agrees to: (i) take measures to protect the Contractor’s confidential information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own comparable confidential information and (ii) require that the Contractor’s confidential information be kept in a reasonably secure location.”

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4	5b	Insert following phrase to end of section “Neither party shall be entitled to any royalties from the other party’s use or sublicense of any ideas, concepts, know-how or techniques developed under this agreement.”
4	5c	Insert bolded phrase “All computer programs and all inventions, discoveries or improvements...” Replace “agrees to grant” with “hereby grants.” Replace “any such invention, discovery, or improvement” with “all computer programs and all such inventions, discoveries, or improvements.”
3	2b	Insert bolded phrase “...to allow the State to maintain the equipment based on Contractor’s methodology; provided however, that Contractor shall have no obligation to provide or disclose any confidential or proprietary information: (1) to the extent it does not so provide or disclose it in the ordinary course of Contractor’s business; and/or (2) in the absence of the State or its designee’s express written agreement to protect Contractor’s confidential and proprietary information in a manner at least as protective as Contractor protects its own confidential information and in accord with this contract. The Contractor agrees that...”
4	4	Insert following phrase to end of section “for injury to the person and/or damage to the tangible property, and arising out of and to the extent of contractor’s fault or negligence.”
4	5b	Change entire section to read “Each party shall retain the perpetual unrestricted right to use and authorize others to use, any ideas, skills, concepts, or techniques developed by that party during performance under this Contract so long as that party is able to do so without violating the provisions of this Contract that protect the other party’s Confidential Information.”
4	5c	Replace “...for any such invention, discovery, or improvement to the Contractor program or any other such...” with “...for any such invention, discovery, or improvement to the Contractor or any other such...”

PURCHASE SPECIAL PROVISIONS		
Page	Section	Proposed Change
1	3	Insert bolded phrase “...provisions reflected in the Statement of Work. Existing orders will be filled at the price in effect on the date Purchase Order is received. Orders placed on the date of a price reduction shall benefit from such reduction. However, should a price decline be announced...”

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1	1a	Insert bolded phrase "...fails to deliver in accordance with the due dates set forth as part of the Contract requirements..." Replace "the delay will interfere with the proper implementation of the State's programs" with "the delay may interfere with the proper implementation of the States programs." Replace "nature of the case, it would be impracticable and extremely difficult" with "nature of the case, it may be impracticable and extremely difficult." Insert bolded phrase " In such instances , the State and Contractor, therefore, presume that in the event of any such delay..."

SOFTWARE SPECIAL PROVISIONS		
Page	Section	Proposed Change
2	4	Replace "duration of this contract" with "period of time during which the State is under the Contractor's Service and Maintenance Contract."
3	7	Insert following phrase to end of section "Future releases will be available at a price determined by the Contractor."
2	4d	Insert new Section 4 d "After delivery of Products to the State, the State shall be responsible for protecting the Products from risk of loss, damage, or destruction. In the event of such loss, damage, or destruction, the Contractor shall cooperate with the State in repairing or replacing the Products at the expense of the State."
3	7	Insert following phrase to end of section "and the license agreement and maintenance agreement applicable to the software product."
1	1a	Insert bolded phrase "...non-transferable license to use the Software Products provided by Contractor to State and as listed in Statement of Work..." Insert following phrase to end of section "With regard to software, "use" shall mean and be limited to loading, storing, copying, altering, compiling or assembling, executing instructions contained in, transmitting and displaying the machine readable portion of the software within the United States. Altering the software includes making modifications and derivative works; however, no right to disassemble, decompile or in any other way reverse engineer any portion of the software is authorized, except and to the extent allowed by applicable law. With respect to all non machine-readable portions of the software, "use" shall mean and be limited to those activities necessary to support use of the machine readable portion of the software. No right is granted to make copies of any non-machine-readable portions of the software."
1	2c	Replace "When changes in designated CPUs occur" with "If changes in designated CPUs occur."
2	4a	Replace "Such maintenance will be performed by Contractor without additional charge for the duration of this contract" with "Such maintenance will be performed by Contractor without additional charge for the duration of the applicable maintenance period."

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Page	Section	Proposed Change
3	6c	Insert following phrase to end of section “;provided, however, that any and all warranty, performance, indemnity or maintenance obligations otherwise owed by Contractor to the State with regard to any modified or merged Software Product shall be null and void.”
4	9	Insert new Section 9 “ Licensed Internal Code – Certain Goods provided by Contractor under the Contract may contain system code (“Licensed Internal Code”) that is installed internally within the Goods when delivered by Contractor. In the event that the State uses any Good that contains Licensed Internal Code, the terms set forth in this Section shall apply. Licensed Internal Code is confidential and proprietary to Contractor. Contractor hereby grants to the State, for so long as the State shall use the Equipment, a non-exclusive and non-transferable right to use the Licensed Internal Code only in the United States and only in the manner in which it is intended to function. The State shall not distribute to any other person, copy, print, alter, access, modify, transport outside the United States, reverse-assemble or reverse-compile, in whole or in part, the Licensed Internal Code. The State shall take appropriate steps to assure that the obligations set forth in this Section are extended to any third party having access to the Goods. Contractor confirms that the license granted to the State hereunder extends to any other user authorized by the State to use the Equipment. The State agrees to notify Contractor in the event the State will part with possession or cease use of the Goods and, in such event, the State shall permit Contractor access to the Goods to remove the Licensed Internal Code. Subject to applicable export control restrictions, Contractor agrees to grant a similar license to any subsequent user of the Goods. Except for the license granted herein, the State receives no right, title, or interest in and to the Licensed Internal Code, including any right of future purchase.”
1	1b	Insert following phrase to end of section “provided the State has acquired a sufficient number of licenses to include the number of users in such business and/or division(s).”
2	4a	Insert bolded phrase “...by Contractor without additional charge, except as set forth in a Statement of Work for the duration of this contract...”

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PERSONAL SERVICES SPECIAL PROVISIONS		
Page	Section	Proposed Change
2	5a	Change entire section to read “During the execution of each project contract which involves the delivery of identified deliverable items, the Contractor may submit invoices based upon agreed amounts for milestones or deliverables. The State will withhold from any payment under this contract the sum of 10% of each invoice. Each invoice submitted by the Contractor shall reflect this 10% withholding. In the aggregate, invoices shall not exceed 90% of the total fixed price amount of the project contract. The balance shall be invoiced and paid upon satisfactory completion of the final acceptance as defined in the project scope of services exclusive of any warranty.”
1	2b	Insert bolded phrase “...provided to the State under this Contract. Before such removal, the State will provide the Contractor with the reasons for dismissal and ten (10) days to correct the performance. If the State exercises...”
3	5a1	Change “less 25 percent” to “less 10 percent.”
3	5a2	Change “less 25 percent” to “less 10 percent.”
1	2b	Insert bolded phrase “...assignment of Contractor personnel provided to the State under this Contract if the State has previously provided the Contractor with notice of a problem and an opportunity to remedy the situation. If the State exercises this right, and...”
2	4a	Delete bolded phrase “...work must be performed which was wholly unanticipated, and which is not specified in this Contract, but which...”
2	4b	Change “unanticipated” to “additional.”
2	4d	Insert bolded phrase “...the Contractor’s billing rates per work hour, estimate of additional expenses , and the Contractor’s estimated...”
2	4g1a	Insert bolded phrase “...expend the estimated additional work hours or service and additional expenses in excess of the original...”
2	4g2	Insert bolded phrase “...the Contractor may expend the estimated additional work hours or services and expenses. The State agrees to...”
3	5d	Change “unanticipated” to “additional.” Insert bolded phrase “...invoices for services and expenses as reflected on Work Authorizations...” Insert bolded phrase “...invoice the State monthly for the work hours expended and expenses incurred in each Work Authorization for the preceding month...” Insert bolded phrase “...and the applicable billing rates and the expenses incurred. In no event shall the total amount...”
1	3b	Replace “is specifically set forth in the Statement of Work” with “are specifically set forth in the Statement of Work.”
1	3d	Insert new Section 3d “The State shall be responsible for its operation and use of the deliverables including, but not limited to, its compliance with all applicable laws and regulations.”
2	3c	Replace “the provision entitled “Unilateral Changes” in the General Provisions” with “the applicable Statement of Work.”
2	4c	Insert following phrase to end of section “other than those specific to additional work being provided under the Work Authorization.”

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2	4a	Insert bolded phrase "...and which is not specified in this Contract, or the original Statement of Work , but which in the opinion of both parties..."
1	3c	Replace "...provision entitled "Unilateral Changes" in the General Provisions" with "...provision entitled "Specific Scope of Work."